United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 08-1467**
	)	**Issued: January 15, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Vienna, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated May 1, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit issues of this case.[1]

ISSUES

The issues are: (1) whether the Office met its burden of proof in reducing appellant's compensation based on its determination that the constructed position of legal assistant/paralegal represented her wage-earning capacity; (2) whether the Office properly determined that appellant forfeited compensation for the period November 10, 2003 to February 10, 2005 because she did not report earnings; (3) whether the Office properly determined that appellant received an overpayment in compensation in the amount of $35,998.41 because she forfeited compensation for this period; (4) whether the Office properly determined that she was at fault and therefore not

[1] The Board notes that oral argument was initially scheduled for September 24, 2008. At appellant's request, the oral argument was rescheduled for 10:00 a.m. on November 6, 2008. She did not appear for the oral argument.

entitled to waiver of the overpayment; and (5) whether the Office properly found that the overpayment was payable in full.

FACTUAL HISTORY

On October 22, 1999 the Office accepted that appellant, then a 40-year-old rural carrier who was working four hours a day, sustained an employment-related low back strain when she injured her back on September 18, 1999 picking up tubs of mail. She stopped work on September 22, 1999. Appellant returned to limited duty and, after several recurrences of disability, she stopped work on February 24, 2001, did not return and was placed on the periodic rolls for eight hours daily. The accepted conditions were later expanded to include aggravated lumbar stenosis and a bulging disc at L4-5.

In December 2002, appellant was referred to Mary Billingsley for vocational rehabilitation and a rehabilitation plan for a bachelor's degree in legal studies was approved. She enrolled in the University of Maryland University College in the fall of 2003. While going to school, appellant participated in a work-study program as an intern at the District of Columbia courts and she completed her paralegal training in the fall of 2005. She submitted Office Forms EN1032 on January 21, 2004, February 10, 2005 and February 6, 2006.

Following the completion of her paralegal training, appellant did not secure employment.[2] In June 2003, Ms. Billingsley had identified the positions of paralegal and title examiner as within the light and sedentary strength categories respectively, within appellant's work restrictions and qualifications and reasonably available in the local labor market. She updated this information on January 30, 2006 and advised that the legal assistant/paralegal position, Department of Labor, *Dictionary of Occupational Titles*, No. 119.267-026, at a weekly pay of $725.00 was most appropriate, finding that it met appellant's medical restrictions with light strength of no lifting over 20 pounds, no prolonged standing, climbing, walking, balancing, stooping, kneeling, crouching, pushing, pulling or crawling. Ms. Billingsley also noted that appellant had over 24 months of specific and general work experience from education, vocational training and previous government employment and the job was reasonably available.

By letter dated March 2, 2006, the Office proposed to reduce appellant's compensation benefits based on her capacity to earn wages as a legal assistant/paralegal. In a March 26, 2006 response, appellant disagreed with the proposed reduction, stating that she was not physically capable of work because she could not sit or stand for more than 15 minutes without severe pain. She attached reports dated March 22, 2006 in which Dr. P. Steven B. Macedo, a Board-certified neurologist, provided physical findings, diagnosed postlaminectomy syndrome of the cervical region and thoracic or lumbosacral neuritis or radiculitis and advised that she could not work.[3]

[2] Appellant was offered one position but turned it down.

[3] Magnetic resonance imaging scan studies dated March 20, 2006 demonstrated a stable appearance of the lumbar spine including spondylosis most notably at L4-5 and foraminal narrowing at that level. The cervical spine demonstrated mild foraminal narrowing and postoperative changes at C5-6.

An April 13, 2006 report of investigation by the Office of the Inspector General of the employing establishment found that appellant participated in a work-study program while a student at the University of Maryland and was granted an award for work at the District of Columbia courts between July 2004 and March 2005. The report noted that appellant did not report that she had worked on an EN1032 form submitted on February 10, 2005. Attached exhibits included the work-study agreement, payroll information, timesheets and a cancelled check.

By report dated June 1, 2006, Dr. Stephen T. Michaels, a Board-certified orthopedist, reported a history that appellant sustained several injuries at work including a head injury that occurred in 1999. He provided findings of decreased range of motion of the cervical spine, spasm in the paracervical and trapezial region and pain in the mid thoracic and lower paralumbar region. Straight leg raising was negative, deep tendon reflexes intact and distal neurologic function intact. Dr. Michaels advised that appellant had degenerative disc disease of the cervical and lumbosacral spine. In a June 5, 2006 report, Dr. Macedo repeated his diagnoses and advised that he had reviewed the proposed jobs identified by the Department of Labor and that appellant was medically unable to perform either job due to her accepted work-related condition. He also recommended that appellant's cervical condition be included as employment related as this had been exacerbated by her lumbar spine condition.

On June 12, 2006 the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a June 22, 2006 report, Dr. Hanley noted the history of injury, appellant's complaint of back pain and his review of the medical record. He advised that she walked comfortably and had no outward appearance of any ongoing problem. Straight leg raising was to 90 degrees with minimal pain, no spasm was present and lower extremity reflexes were intact. Dr. Hanley diagnosed degenerative disc disease of the lumbosacral spine. He noted that he had reviewed the job descriptions for title examiner and paralegal and commented:

> "In my mind there is absolutely no reason that [appellant] cannot do both of these jobs without any difficulty whatsoever. Obviously, she would disagree. She claims to only be able to sit for [10] minutes but that can[no]t be the case because she sat at least that long in my office at the time of the exam[ination.] It is my belief that she is perfectly capable of everyday sedentary activities and the activities of daily living without any significant restriction. Dr. Smith saw her in the past and limited her lifting to 20 pounds and that clearly is enough capability to perform these duties. I believe that her chronic pain syndrome which has kept her disabled all of these years really is a minimal pain syndrome. The amount of treatment that she is receiving is minimal. As to her physical capabilities, the functional capacity evaluations contained in the medical record are probably of no value since functional capacity evaluations are only beneficial and helpful in patients that want to go back to work not in patients that do n[o]t want to go back to work. Patients that do n[o]t want to go back to work for whatever reason, typically do not fully cooperate with the exam[ination] and the results arc invalid."

By letter dated June 23, 2006, the Office issued a preliminary decision, advising appellant that if she had engaged in work activity for the 15 months prior to her signature of a 1032 form on February 10, 2005, she had forfeited her right to compensation for the period November 10, 2003 to February 10, 2005.

In a June 24, 2006 letter, appellant disagreed with the June 23, 2006 decision, arguing that the work-study award was not earnings and that she did not intentionally not report income. She also stated that pain made it difficult for her to keep up with her course work, that her medication made her "loopy" which clouded her judgment and that it never entered her mind to include the internship and financial aid from the University of Maryland on the EN1032 form.

By decision dated July 26, 2006, the Office finalized the March 2, 2006 proposed reduction in benefits, effective July 21, 2006, based on appellant's ability to earn wages as a legal assistant. Dr. Macedo continued to submit reports and in an August 18, 2006 report, Dr. Warren Yu, a Board-certified orthopedic surgeon, noted midline tenderness from L4 to S1, with pain on flexion. Appellant had no motor or sensory deficit, atrophy or clonus and pain with straight leg raising. Dr. Yu diagnosed discogenic back pain at L4-5 and discussed surgical options with appellant. An August 18, 2006 lumbar spine x-ray demonstrated degenerative changes and no evidence of instability.

On August 23, 2006 the Office finalized the preliminary forfeiture finding of June 23, 2006 on the grounds that appellant failed to report earnings on Office 1032 forms as required and, as such, an overpayment in compensation was created for which she was at fault. It also issued a preliminary finding that an overpayment had been created because appellant failed to report earnings on an Office 1032 form signed on February 10, 2005 and thus forfeited compensation for the period November 10, 2003 to February 10, 2005. An Office computer print-out and overpayment worksheet indicated that appellant received wage-loss compensation totaling $35,998.41 for this period. On August 24, 2006 appellant requested a hearing regarding the July 26, 2006 decision, on September 7, 2006, requested a hearing of the August 23, 2006 final forfeiture decision and on September 19, 2006, requested a hearing regarding the August 23, 2006 preliminary overpayment finding and submitted an overpayment questionnaire.

In reports dated September 11 and 28, 2006, Dr. Robert Gerwin, a Board-certified neurologist, noted appellant's complaints of neck and back pain and a history that she sustained a head injury in 1997 and an employment injury in 1999. Physical findings included restricted back motion and diffuse trigger points in the muscles of the head, neck, shoulders thoracics, paraspinals, quadriceps and buttock muscles bilaterally. Dr. Gerwin diagnosed spinal stenosis of the lumbar region, herniated disc syndrome and myofascial pain.

Two hearings were held on March 9, 2007. At the first, on the issue of whether appellant had the capacity to earn wages as a legal assistant, she argued that the medical evidence used to determine that she had the physical capacity for the position was old. She stated that the position was vocationally appropriate but that the salary was too high and that she was not physically capable of working full time. At the second hearing, on the issue of forfeiture and overpayment, appellant testified that she did not consider her work-study grant earnings although she acknowledged it was somehow linked with work she did at the District of Columbia courts and

that she did not intend to mislead anyone. She also testified about her income and expenses, noting that she worked 10 to 20 hours a week in private employment.

In separate decisions dated May 1, 2007, an Office hearing representative affirmed the July 26, 2006 decision finding that appellant had the capacity to earn wages as a legal assistant and that she forfeited compensation for the period November 10, 2003 to February 10, 2005, thereby creating an overpayment in compensation in the amount of $35,998.41, for which she was at fault. He determined that the entire amount of the overpayment was due and payable.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[4] An injured employee who is either unable to return to the position held at the time of injury or unable to earn equivalent wages, but who is not totally disabled for all gainful employment, is entitled to compensation computed on loss of wage-earning capacity.[5]

Section 8115 of the Federal Employees' Compensation Act[6] and Office regulations provide that wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity or the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of his injury, the degree of physical impairment, his usual employment, his age, his qualifications for other employment, the availability of suitable employment and other factors or circumstances which may affect his wage-earning capacity in his disabled condition.[7]

The Office must initially determine a claimant's medical condition and work restrictions before selecting an appropriate position that reflects his or her wage-earning capacity. The medical evidence upon which the Office relies must provide a detailed description of the condition.[8] Additionally, the Board has held that a wage-earning capacity determination must be based on a reasonably current medical evaluation.[9]

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by the Office for selection of a position listed in the Department of Labor's *Dictionary of Occupational Titles* or otherwise available in the open market, that fits that employee's capabilities with regard to his or her physical limitations, education, age and prior experience.

[4] *James M. Frasher*, 53 ECAB 794 (2002).

[5] 20 C.F.R. §§ 10.402, 10.403; *John D. Jackson*, 55 ECAB 465 (2004).

[6] 5 U.S.C. §§ 8101-8193.

[7] 5 U.S.C. § 8115; 20 C.F.R. § 10.520; *John D. Jackson, supra* note 5.

[8] *William H. Woods*, 51 ECAB 619 (2000).

[9] *John D. Jackson, supra* note 5.

Once this selection is made, a determination of wage rate and availability in the open labor market should be made through contact with the state employment service or other applicable service.[10] Finally, application of the principles set forth in *Albert C. Shadrick*[11] will result in the percentage of the employee's loss of wage-earning capacity.[12]

In determining an employee's wage-earning capacity based on a position deemed suitable, but not actually held, the Office must consider the degree of physical impairment, including impairments resulting from both injury related and preexisting conditions, but not impairments resulting from post injury or subsequently acquired conditions. Any incapacity to perform the duties of the selected position resulting from subsequently acquired conditions is immaterial to the loss of wage-earning capacity that can be attributed to the accepted employment injury and for which appellant may receive compensation.[13]

ANALYSIS -- ISSUE 1

The Board finds that the well-rationalized opinion of Dr. Hanley, who provided a second opinion evaluation for the Office, established that appellant had the capacity to earn wages as a legal assistant. Appellant, who had stopped work in February 2001, was referred for vocational rehabilitation in December 2002 and a rehabilitation program for paralegal studies at the University of Maryland was approved. She completed her paralegal training in the fall of 2005 but did not secure employment. In June 2003, the vocational rehabilitation counselor, Ms. Billingsley, had identified two positions that fit appellant's capabilities: title examiner and legal assistant/paralegal. In his June 12, 2006 report, Dr. Hanley noted his review of the medical record, the history of injury and appellant's complaints and provided findings on physical examination. He advised that appellant was capable of everyday sedentary activities and the activities of daily living without significant restriction and felt she was capable of lifting 20 pounds. Dr. Hanley reviewed the legal assistant position and advised that there was no reason that she could not do the job.

Although appellant submitted medical reports from Drs. Yu, Gerwin and Michaels, their reports do not support that she was unable to perform the duties of the legal assistant/paralegal position due to her employment injuries or any preexisting conditions as they did not provide any opinion regarding her ability to perform the duties of the selected position. While Dr. Macedo advised that appellant could not perform the duties of the selected position, he did not explain the mechanics of why her diagnosed conditions prevented her from performing the relatively

[10] *James M. Frasher, supra* note 4.

[11] 5 ECAB 376 (1953); *see also* 20 C.F.R. § 10.403. The Office calculates an employee's wage-earning capacity in terms of percentage by dividing the employee's earnings by the current pay rate for the date-of-injury job. Under *Shadrick*, the Office's determination rests on three variables: (1) claimant's base annual pay at the time of injury, the time disability began or the time compensable disability recurs; (2) the base annual pay for the same grade and step on the date the Office used to compare pay rates under *Shadrick*; and (3) claimant's base annual pay on the same date in her limited-duty position. If any of these figures are incorrect or unreliable, then the Office did not properly determine appellant's wage-earning capacity.

[12] *James M. Frasher, supra* note 4.

[13] *John D. Jackson, supra* note 5.

sedentary duties of the position. The Board has long held that medical opinions not containing rationale are of diminished probative value.[14] The medical evidence thus establishes that appellant could perform the duties of the legal assistant/paralegal position.

On January 30, 2006 Ms. Billingsley updated the labor market survey information. She provided a job description for the legal assistant/paralegal position, noting that it required light strength, found that appellant fit the educational requirements, that the position was within appellant's medical restrictions and was available in sufficient numbers so as to make it reasonably available within her commuting area, at a weekly wage of $725.00.

The Board finds that the Office considered the proper factors, such as availability of suitable employment and appellant's physical limitations, usual employment and age and employment qualifications, in determining that the position legal assistant/paralegal represented her wage-earning capacity.[15] The weight of the evidence of record establishes that appellant had the requisite physical ability, skill and experience to perform this position and that it was reasonably available within the general labor market of her commuting area. The Office therefore properly determined that the position of legal assistant/paralegal reflected appellant's wage-earning capacity and, using the *Shadrick* formula,[16] reduced her compensation effective July 21, 2006.[17]

LEGAL PRECEDENT -- ISSUE 2

Section 10.5(g)(1) of Office regulations defines earnings as gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration.[18]

Section 8106(b) provides that the Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. It provides that an employee who fails to make an affidavit or report when required or knowingly omits or understates any part of his or her earnings forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.[19] Section 10.529 of Office regulations further provides that a false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution[20]

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[14] *N.J.*, 59 ECAB ____ (Docket No. 07-45, issued November 14, 2007).

[15] *James M. Frasher, supra* note 4.

[16] *Supra* note 11.

[17] *James Smith*, 53 ECAB 188 (2001).

[18] 20 C.F.R. § 10.5(g)(1).

[19] 5 U.S.C. § 8106(b); *see F.C.*, 59 ECAB ____ (Docket No. 07-1541, issued November 16, 2007).

[20] 20 C.F.R. § 10.529(a).

The Board has held that it is not enough to merely establish that there were unreported earnings or employment. Appellant can be subjected to the forfeiture provisions of section 8106(b) only if he or she knowingly failed to report employment or earnings.[21] The term knowingly, as defined by section 10.5(n) of Office regulations, means "with knowledge, consciously, willfully or intentionally."[22]

Section 10.525(b) of Office regulations provides that the employee must report even those earnings which do not seem likely to affect his or her level of benefits.[23] The language on Office EN1032 forms is clear and unambiguous in requiring a claimant to report earnings for the previous 15 months from any employer, self-employment or a business enterprise in which he or she worked. The forms further emphasize that severe penalties may be applied for failure to report all work activities thoroughly and completely.

ANALYSIS -- ISSUE 2

The Board finds that appellant forfeited her right to compensation for the period November 10, 2003 to February 10, 2005 because she did not report earnings on an Office EN1032 form signed by her on February 10, 2005. The language clearly advises that all income or payment in any kind must be reported. The record supports that appellant received a work-study grant from the University of Maryland for work at the District of Columbia courts. The agreement, signed by appellant on June 10, 2004, shows an hourly wage of $12.00 and that she was available to work for 680 hours. Under these circumstances, the Board finds that appellant's failure to fully report her work-study employment a knowing omission,[24] and she forfeited her right to compensation for the period November 10, 2003 to February 10, 2005.

LEGAL PRECEDENT -- ISSUE 3

Section 10.529(b) of Office regulations states that, where the right to compensation is forfeited, the Office shall recover any compensation already paid for the period of forfeiture pursuant to section 8129 of the Act and other relevant statutes.[25]

ANALYSIS -- ISSUE 3

As discussed above, appellant forfeited her right to compensation for the period November 10, 2003 to February 10, 2005, because she knowingly failed to report earnings. An overpayment in compensation was therefore created. In calculating the amount of the overpayment, the Office properly determined that appellant received wage-loss compensation totaling $35,998.41 for the period in question. As appellant was not entitled to receive

[21] *F.H.*, 60 ECAB ____ (Docket No. 07-1379, issued November 24, 2008).

[22] 20 C.F.R. § 10.5(n).

[23] *Id*. at § 10.525(b).

[24] *Id*. at § 10.5(n); *F.H., supra* note 21.

[25] 20 C.F.R. § 10.529(b).

compensation benefits during a period that she knowingly failed to report earnings, the Office permissibly determined that an overpayment in compensation in the amount of $35,998.41 had been created for the period November 10, 2003 to February 10, 2005.[26]

LEGAL PRECEDENT -- ISSUE 4

Section 8129 of the Act provides that an overpayment in compensation shall be recovered by the Office unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience."[27]

Section 10.433(a) of the Office's regulations provides:

> "The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from [the Office] are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault in creating an overpayment: (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) Failed to provide information which he or she knew or should have known to be material; or (3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual)."[28]

To determine if an individual was at fault with respect to the creation of an overpayment, the Office examines the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.[29]

ANALYSIS -- ISSUE 4

In this case, the Office found appellant at fault in creating the overpayment in compensation because she knowingly failed to report earnings. Appellant had an obligation to show good faith and to exercise a high degree of care in reporting events that could affect the amount of her compensation.[30] On an Office EN1032 form, signed by appellant on February 10, 2005, she indicated that she had no earnings or income. As demonstrated by a work-study

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[26] *F.C., supra* note 19.

[27] 5 U.S.C. § 8129; *see Linda E. Padilla*, 45 ECAB 768 (1994).

[28] 20 C.F.R. § 10.433; *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

[29] *Id*. at § 10.433(b); *Duane C. Rawlings*, 55 ECAB 366 (2004).

[30] *Sinclair L. Taylor, supra* note 28.

agreement found in the record, appellant knew that she was being paid under a work-study grant for work at the District of Columbia courts during the periods covered by the Office's EN1032 form. The form clearly advised appellant that a false or evasive answer to any question could be grounds for forfeiting compensation benefits and advised that severe penalties could be applied for failure to report all income and work activities thoroughly and completely. When appellant signed her name to the form, she certified that she understood that she must immediately report to the Office any employment or work activities. She failed to inform the Office of her work-study grant, information that she knew or should have known was material to the calculation of her wage-loss compensation. The Board finds the fact that appellant did not report her earnings is probative evidence that she was aware of the consequences of reporting and that she knew or should have known that she was not entitled to receive wage-loss compensation while she was performing work activities and was thus at fault in the creation of the overpayment in compensation.[31] Because she is at fault in the creation of the overpayment, she is not entitled to waiver.

LEGAL PRECEDENT -- ISSUE 5

Section 10.441 of the Office's regulations provide that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to the Office the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize hardship.[32]

ANALYSIS -- ISSUE 5

In this case, appellant is receiving continuing compensation benefits for disability.[33] While the Office should follow minimum collection guidelines, in general government claims should be collected in full and, if an installment plan is accepted, the installments should be large enough to collect the debt properly.[34] In the May 1, 2007 decision, an Office hearing representative found the entire amount of the overpayment, $35,998.41, payable in full at that time. He stated that, after a review of the financial information supplied by appellant in the record and at the hearing, her monthly expenses exceeded her income and it was thus his opinion that a reasonable repayment plan could not be established based on the evidence of record. He concluded that he had no alternative but to find the entire amount payable in full. The Board

[31] *F.C., supra* note 19.

[32] 20 C.F.R. § 10.441; *see Steven R. Cofrancesco*, 57 ECAB 662 (2006).

[33] With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where the Office seeks recovery from continuing compensation benefits under the Act. *D.R.*, 59 ECAB ___ (Docket No. 07-823, issued November 1, 2007).

[34] Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4d(1)(b) (September 1994).

finds that, as the hearing representative considered all relevant factors, the Office properly required repayment of the $35,998.41 overpayment.[35]

CONCLUSION

The Board finds that the Office met its burden of proof in reducing appellant's compensation based on her ability to earn wages in the constructed position of legal assistant, that she forfeited compensation for the period November 10, 2003 to February 10, 2005 and was thus at fault in the creation of an overpayment in the amount of $35,998.41 and that the Office permissibly required that the overpayment be paid in full.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 1, 2007 be affirmed.

Issued: January 15, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[35] *See Steven R. Cofrancesco, supra* note 32.